IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO .12646 of 2004

Between:

Mallik Shabbir, S/o. Mallik Jaker,
R/o. D.No. 16-5-340/A/122, Malakpet, Hyderabad.

..... PETITIONER

AND

The Assistant Secretary, Regional Transport Authority,
Hyerabad East Zone.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly one in the nature of Writ of Mandamus, declaring the action of the respondent in issuing the impugned show cause Notice in No. 6628/A/HF/2003 dated 18-11-2003, directing the petitioner to pay the Compounding Fee of Rs. 52,000/- for the alleged violation of carrying an overload of 52,000 kgs. on the petitioner's lorry bearing Registration No. AP.09-T-3929, without following the procedure contemplated under the Act and the Rules made thereunder is arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution of India and accordingly set aside the impugned notice of the respondent vide S.C.N.No. 6628/A7/HF/2003 dated 18-11-2003 and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.G.TUHIN KUMAR

Counsel for the Respondent: GP FOR TRANSPORT

The Court at the admission stage made the following Order :

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO.12646 OF 2004

ORDER:

The issues raised in this writ petition are covered by a decision of the Division Bench of this Court in W.P.No.23445 of 2003 and batch dated 27-11-2003, wherein this Court held as under:

> "Since the point for consideration in all these writ petitions are similar, they are being disposed of by this common order.
>
> In all these writ petitions, the controversy is that the respondent department is seeking to collect compounding fee on the ground of violation of permit conditions while transporting goods in the vehicles in question. Issue Rule nisi.
>
> During the course of hearing of the writ petitions, what is noticed by us is that had the respondents collected information about the overloading in the transit, the respondents shall put to the petitioners the incriminating evidence they have collected and seek explanation from the petitioners and thereafter, on the basis of the explanation they are entitled to proceed further in accordance with law, if the petitioners have violated any condition. Till such procedure is adopted, the respondents cannot proceed against the petitioners seeking to collect compounding fee, as if the commission of offence is established against the petitioners.
>
> In that view of the matter, we set aside the impugned orders in all these writ petitions and permit the respondents to follow the procedure as indicated by us and determine the liability, if any, according to the provisions of the Motor Vehicles Act, after giving due opportunity to the petitioners.
>
> Accordingly, the writ petitions are disposed of. No costs."

Following the above decision, this writ petition is also disposed of in terms of the judgment of this Court referred to above. No order as to costs.

30-07-2004

usd

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To

1. The Assistant Secretary, Regional Transport Authority,
   Hyerabad East Zone.

2 2CCs to GP for Transport, High Court of A.P., Hyderabad (o.u.t)

3 2CD copies